

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20555

In the Matter of)	
)	
Streamlining Deployment of Small Cell)	WT Docket No. 16-421
Infrastructure by Improving Wireless Facilities)	
Siting Policies)	
)	
Mobilitie, LLC Petition for Declaratory Ruling)	

**COMMENTS OF THE BOARD
OF COUNTY ROAD COMMISSIONERS
OF THE COUNTY OF OAKLAND, MICHIGAN**

The Board of County Road Commissioners of the County of Oakland (the “RCOC”), a Michigan public body corporate, with jurisdiction and control over 2,600 miles of roads in Oakland County, Michigan, files these comments in response to the Federal Communication Commission’s (the “Commission”) Request for Comment on Streamlining Deployment of Small Cell Infrastructure By Improving Wireless Facilities Siting Policies.

I. INTRODUCTION AND BACKGROUND

In an effort to promote and encourage the deployment of wireless network infrastructure, the Commission issued a Declaratory Ruling in 2009¹ and an Infrastructure Order in 2014² to clarify Sections 253 and 332(c)(7) of the Communications Act³ and Section 6409(a) of the

¹ See *Petition for Declaratory Ruling to Clarify Provisions of Section 332(c)(7) to Ensure Timely Siting Review*, Declaratory Ruling, 24 FCC Red 13994,14020, para. 67 (2009)(2009 Petition), *aff’d*, *City of Arlington v. FCC*, 668 F.3d 229 (5th Cir. 2012), *aff’d*, 133 S. Ct. 1863 (2013)

² See *Acceleration of Broadband Deployment by Improving Wireless Facilities Siting Policies*, Report and Order, 29 FCC Red 12865,12866-69, 12878-81, paras. 2-8,29-34 (2014) , erratum, 30 FCC Red 31 (2015), *aff’d*, *Montgomery County v. FCC*, 811 F.3d 121 (4th Cir. 2015) (2014 Infrastructure Order).

³ See Telecommunications Act of 1996, Pub. L. 104-104, §§ 101,704 (codified at 47 U.S.C. §§ 253,332(c)(7))

Spectrum Act.⁴ Specifically, the FCC addressed wireless industry concern over the amount of time necessary for review of applications by creating a “shot clock,” or maximum reasonable time that local authorities could review applications to deploy infrastructure in the right-of-way.⁵

Now, in its Petition for Declaratory Ruling filed on November 15, 2016⁶ (the “Petition”) Mobilitie, LLC, alleges that the prior actions of the Commission were insufficient, and that further action must be taken.⁷ The Commission, responding to these assertions, has issued a Public Notice dated December 22, 2016,⁸ asking for comment on a number of the allegations contained in the Petition. The areas on which the Commission has requested comment can be categorized into three general areas. First, whether the Commission should take any further action to help promote the successful deployment of wireless network infrastructure. Second, whether providing a definition of the terms “fair and reasonable compensation” and “competitively neutral and nondiscriminatory,” as contained in Section 253(c) of the Federal Communication Act⁹ will facilitate deployment. Third, the Commission seeks information on the procedures used by local agencies in processing applications, specifically for examples of local government practices that streamline deployment of wireless facilities, and any general comments on the Petition.

II. SUMMARY OF ARGUMENT

In response to the Commission’s requests, the RCOC first asserts that the Commission’s actions in the Declaratory Ruling and Infrastructure Order are sufficient to promote deployment

⁴ See Middle Class Tax Relief and Job Creation Act of 2012 (Spectrum Act), Pub. L. No. 112-96, 126 Stat. 156, § 6409(a) (2012) (codified at 47 U.S.C. § 1455(a)).

⁵ See 2009 Petition and 2014 Infrastructure Order

⁶ See Mobilitie, LLC Petition for Declaratory Ruling, *Promoting Broadband for All Americans by Prohibiting Excessive Charges for Access to Public Rights of Way* (filed Nov. 15, 2016).

⁷ Id.

⁸ See Federal Communications Commission, *Comment Sought on Streamlining Deployment of Small Cell Infrastructure By Improving Wireless Facilities Siting Policies*, WT Docket No. 16-421

⁹ 47 U.S.C. § 253(c)

of wireless technologies in the public right-of-way and no further action is necessary. The RCOC's existing process and procedures allow for a balance between the public safety, local aesthetics, and the need to deploy new wireless technology. If there are obstacles to deployment, it is not the process and procedures of the local agencies. The true obstacles to deployment are the safety and aesthetic concerns raised by petitioner Mobilitie's attempt to install 120 foot monopoles, which are three times the size of traditional utility poles, and concerns over Mobilitie's inability to satisfactorily answer whether it is a public utility that is eligible to locate facilities in the public right-of-way.

Second, RCOC submits its procedures for processing applications to utilize the public right-of-way as evidence that the process for siting wireless infrastructure does not need improvement. RCOC also submits its approach of working with private industry to market its rights of way as potential sites for wireless facilities as an example of a local governmental practice which streamlines deployment.

Finally, it is RCOC's position that the statutory language found in Section 253 (c) of the Communications Act, which allows for "fair and reasonable compensation," that is "competitively neutral and non-discriminatory," is plainly written and does not need clarification. If the Commission determines that it is necessary to further define "fair and reasonable compensation," any new definition should be broadly based and include all costs borne by local agencies, including the high cost of acquiring public rights of way. The Commission should also take care that any new definition does not allow private companies to be enriched by transferring costs onto the public. If the Commission determines that it must define "competitively neutral and non-discriminatory," this definition should take into account

the wide variety of applicants to use the public right-of-way, and include guidance about the type of applicants that would be subject to this requirement.

III. DISCUSSION

A. IT IS NOT NECESSARY FOR THE COMMISSION TO TAKE FURTHER ACTION TO PROMOTE DEPLOYMENT OF WIRELESS INFRASTRUCTURE IN PUBLIC RIGHTS OF WAY

1. RCOC encourages deployment of wireless infrastructure.

Oakland County has 2,000 tech firms with 42,000 jobs in the tech field, which is more than twice the number of any other county in Michigan.¹⁰ Nearly 100 companies chose to locate in Oakland County in the last ten years, investing over \$586 million and creating more than 10,500 jobs in the community.¹¹ RCOC has long been a national leader in deploying the latest signal and traffic control technologies, and was one of the first in the country to deploy computerized “smart” traffic signals that monitor traffic flow and automatically adjust traffic signal timing to maximize the efficiency of traffic flow.¹² As a member of the Michigan Connected and Automated Vehicle Working Group,¹³ RCOC is on the leading edge of development of driverless vehicle technology, and recognizes the benefits that deploying the next generation of wireless technology will bring to our community.¹⁴ RCOC supports, encourages, and drives the deployment of advanced technologies, including the latest generation of wireless.

2. Deployment of wireless technologies cannot be done at the expense of safety.

While RCOC encourages the deployment of wireless technologies, such deployment must be done in a manner that ensures the safety of motorists, pedestrians, and other users of the

¹⁰ <https://www.oakgov.com/advantageoakland/programs/Pages/tech248.aspx>, (accessed 2/14/2017)

¹¹ Id.

¹² <http://www.rcocweb.org/178/FAST-TRAC>(accessed 2/22/2017)

¹³ http://www.michigan.gov/documents/mdot/Michigan_CAV_Working_Group_June_3_2016_528673_7.pdf (accessed 2/22/2017)

¹⁴ http://www.michigan.gov/documents/msp/santilli-presentation_350343_7.pdf (accessed 2/22/2017)

public right-of-way. Safety is the first priority of RCOC, and this focus has created one of the safest road systems in the nation.¹⁵ RCOC's stewardship of the public right-of-way plays an important role in the safety of its roadways. RCOC must ensure that work in the right-of-way is performed safely; does not damage the road infrastructure, sidewalks, driveways, or utility infrastructure; and that installations meet engineering standards as well as any other local, state or federal requirements. RCOC has long had procedures in place that create a balance between ensuring safety and allowing for the efficient review of applications to locate facilities within the public right-of-way.

3. RCOC's existing process works.

Applicants that wish to locate facilities in the right-of-way of a road under the jurisdiction of RCOC must first apply for a permit, by submitting an application and plan sheets depicting the proposed facility. These plans are reviewed by the RCOC Permits Department and inspected in the field to determine if the proposed facility is compliant with the safety and engineering standard contained in the RCOC manual of Permit Specifications and Standards, an excerpt of which is attached hereto as Exhibit 1.

4. RCOC's Master Infrastructure Marketing Agreement streamlines deployment of wireless infrastructure.

In addition to processing standard permit applications for location of the infrastructure in the road right-of-way, RCOC has partnered with a private company, Neo Networks, Inc., through a nonexclusive master infrastructure agreement, to create a database of RCOC infrastructure, including poles, traffic signals and buildings, that have potential as sites for the collocation of

¹⁵ Id.

wireless facilities.¹⁶ This database is actively marketed to wireless carriers, which are able to select locations that are best suited to their deployment needs.

The benefits for wireless providers from this agreement are:

- The ability to quickly identify collocation opportunities in areas where they wish to expand coverage;
- A streamlined process for approval of location siting; and
- A clear and predictable fee structure that allows for accurate project cost projections.

The benefits for a local agency of such an agreement are:

- A revenue stream that helps to offset costs associated with acquisition and maintenance of rights-of-way; and
- Compliance with the public disclosure of compensation required by 47 U.S. Code § 253.

B. MOBILITIE HAS ITSELF CREATED OBSTACLES TO DEPLOYMENT OF WIRELESS FACILITIES

1. Unsafe 120 foot poles.

Left unsaid in the Petition, and a significant obstacle to deployment of wireless technology, is that many of Mobilitie's applications are for the installation of 120 foot monopoles, which are well above the usual 40 foot height of common utility and traffic signal poles. *See* Exhibit 2. A pole of this size is more reminiscent of a power transmission or cellular tower, which have fall zones specifically designed for structures of that height. A typical RCOC right-of-way is full of pedestrian and vehicle traffic, and is usually only 66 feet wide; about half as wide as the height of the proposed monopoles. Poles with a height of 120 feet raise unique safety concerns, and cannot be permitted in the same manner as standard 40 foot poles installations, or typical utility pole-wireless collations.

¹⁶ RCOC NEO Master Infrastructure Agreement dated July 5, 2016

2. Is Mobilitie a public utility entitled to locate facilities in the public right-of-way?

Also left unsaid in the Petition, is that questions about whether Mobilitie is a public utility have not been adequately answered. Mobilitie has asserted in communications to RCOC that it is a regulated telecommunications company that is allowed access to public road rights-of-way under Michigan and Federal law. But Mobilitie has not presented facts that would definitively support this assertion. RCOC is the trustee of the public road right-of-way and has an obligation to ensure that it does not become overcrowded and unsafe. Not being able to clearly ascertain whether an applicant is a utility authorized to locate facilities in the right-of-way constitutes an obstacle to wireless deployment.

C. “FAIR AND REASONABLE COMPENSATION,” AND “COMPETITIVELY NEUTRAL AND NON-DISCRIMINATORY” ARE PLAIN LANGUAGE THAT AND DOES NOT NEED CLARIFICATION

The Section 253(c) language which allows local governments to charge “fair and reasonable compensation” fees that are “competitively neutral and non-discriminatory” is plain language that does not need further interpretation. Any further in definition of this language would likely take away the flexibility that allows local governments and jurisdictions to tailor local practices and regulations to meet local needs.

1. Any definition of “fair and reasonable compensation” adopted by the Commission should incorporate costs of right-of-way acquisition.

Section 253(c) of the Communications Act¹⁷ recognizes that state and local governments have the authority to manage public rights of way **and to require fair and reasonable compensation** from telecommunications providers.¹⁸ The petition from Mobilitie, LLC alleges

¹⁷ 47 U.S.C. § 253(c) (bold type added)

¹⁸ Id.

that it faces discriminatory and excessive fees for placement of its facilities in the right-of-way.¹⁹ It seeks to limit the phrase “fair and reasonable compensation,” as it is used in Section 253(c), to mean that local governments are only entitled to recover right-of-way permit and management costs, and that any additional charges should be unlawful. This proposed limitation is not equitable, due to its lack of consideration of the high cost of acquiring property for rights of way. The result of such a definition would allow Mobilitie and wireless providers to unfairly shift these costs onto others.

2. All users of the public right-of-way should pay their fair share.

Under the scheme proposed by Mobilitie, it could freely locate its facilities in public rights-of-way, leaving the heavy costs for land acquisition to others. Right-of-way acquisition costs in Oakland County run in the millions of dollars annually, and are paid through federal and local gas taxes and auto registration fees. The costs associated with acquiring right-of-way are a significant component of each road building project, and frequently are as much as the cost of actually constructing the road. That means that RCOC often spends nearly as much to buy right-of-way as it does for earthmoving, concrete, and construction workers’ salaries. Other users of the right-of-way should share in these costs. If the Commission defines “fair and reasonable compensation” as limited to right-of-way maintenance and permit fees, it will allow the wireless industry to be a free rider, padding private profit margins, while pushing the industry’s fair share of costs onto the public.

3. Market value is the most practical and fair method of determining compensating for right-of-way acquisition costs.

The most practical and fair way to allow local agencies to recoup costs for right-of-way acquisitions is for wireless providers to pay a fee that is based on market rates. All public

¹⁹ Mobilitie Petition at 15

agencies must pay market rates to acquire property for public use, and wireless providers should be held to the same standard. When RCOC acquires property for right-of-way, under the US²⁰ and Michigan Constitutions²¹ and other state and federal laws, it must pay just compensation²², which includes the market rate for the property as well as legal and other significant fees.²³ In turn, wireless providers should be required to pay a reasonable rental fee that is based on the market rental rate for the property sought.

4. Any definition of “competitively neutral and non-discriminatory,” should include guidance about the type of telecommunications provider that would be subject to this requirement.

Section 253(c) of the Communications Act recognizes that state and local governments have the authority to manage public rights of way and to require fair and reasonable compensation from **telecommunications providers, on a competitively neutral and non-discriminatory basis.**²⁴ Mobilitie has petitioned the Commission to define “competitively neutral and non-discriminatory” as fees that do not exceed those imposed on other providers for similar access.²⁵ The more difficult question for RCOC, is which of the myriad of applicants who wish to install equipment in the right-of-way are a telecommunications provider under the Communications Act. For example, is the petitioner Mobilitie a telecommunications carrier under the Communications Act? The statutory definition of “telecommunications carrier,” is a provider of “telecommunications services.”²⁶ The statute goes on to define “telecommunications services” as the offering of telecommunication for a fee directly to the public.²⁷ RCOC information on Mobilitie suggests that it is in the business of constructing tower and wireless

²⁰ U.S. Const. Amend. V

²¹ Michigan Const. 1963, Art. X, § 2

²² The Michigan Uniform Condemnation Procedures Act, Act 87 of 1980, MCL 213.51, *et al.*, as amended

²³ *Id.*

²⁴ 47 U.S.C. § 253(c)

²⁵ Mobilitie Petition at 31-34

²⁶ 47 U.S.C. § 153 (51)

²⁷ *Id.*

infrastructure and is not marking any telecommunications services directly to the public. Thus, it is unclear whether Mobilitie is a telecommunications carrier under the Communications Act, and if any of the statutory protections and obligations would apply to it.

IV. CONCLUSION

The Commission should ensure that all users of the public right-of-way pay their fair share. Any clarification of the term “fair and reasonable compensation” under the Communications Act should allow for a market rate rental fee, as compensation to local public agencies for right-of-way acquisition costs. Any definition of “competitively neutral and non-discriminatory,” should include guidance about the type of telecommunications provider that would be subject to this requirement. The Commission should also encourage cooperation between public agencies and wireless carriers through adoption of agreements, similar to RCOC’s master infrastructure agreement, that will streamline deployment of wireless facilities. Finally, the Commission should recognize that Mobilitie has itself contributed to delays in the deployment of wireless facilities, through applications for 120 foot poles, and failing to resolve uncertainty about its authority to access the public right-of-way.

Respectfully submitted,

**Board of County Road Commissioners of the
County of Oakland, Michigan**



By: Eric S. Wilson

Its: Chairman

EXHIBIT 1

ROAD COMMISSION FOR OAKLAND COUNTY
PERMIT RULES, SPECIFICATIONS AND GUIDELINES



ROAD COMMISSION FOR OAKLAND COUNTY

DEPARTMENT OF CUSTOMER SERVICES

PERMITS DIVISION

2420 PONTIAC LAKE ROAD

WATERFORD, MI 48328

MARCH 14, 2013

ROAD COMMISSION FOR OAKLAND COUNTY
PERMIT RULES, SPECIFICATIONS, AND GUIDELINES

March 14, 2013

Department of Customer Services
Permits Division

Road Commission for Oakland County

2420 Pontiac Lake Road

Waterford, Michigan 48328

(248) 858-4835

PART 2 –PERMITTING PROCESS

RULE 2.1 AUTHORIZED APPLICANT

Applications for permits may be accepted from Property Owners, the Property Owner's contractor or authorized agent, or from government agencies.

RULE 2.2 APPLICATIONS FOR PERMIT (S)

Applicants shall submit applications for permits in the manner prescribed by, and on the appropriate forms supplied by, the Permits Division, together with the appropriate fees as established by the Board. Application and permit Form #226 is required for Residential Driveways. Form 64A is required for application for permits for any other activity covered under Rule 1.1. Permits for activities covered under Rule 1.1, other than Residential Driveways, are issued on Form 20A. Applicants shall submit with the application plans or drawings satisfactory to the Permits Division containing the information required by Rule 2.3.

RULE 2.3 PLAN REQUIREMENTS FOR PROPOSED RIGHT-OF-WAY ACTIVITY

With each permit application, Applicant shall submit five (5) sets of plans or drawings for traffic signal permits and three (3) sets of plans or drawings for all other permits, which plans or drawings shall clearly indicate the following features, or such other features as the Permits Division may require to adequately review the proposed work and/or activities for which a permit application is made:

- 2.3.1 Existing road surface, ditches, Right-of-Way and property lines, road appurtenances, medians (if existing) and dimensions thereof, driveways on adjacent property and on property along and opposite the Road Frontage, names of existing and proposed roads, utilities, Sight Distance triangles, and other physical features which may impact the design, approval, and construction of the proposed work. Applicant shall provide a topographic survey for the entire road width and for the length of the project.
- 2.3.2 All buildings, both proposed and existing, appurtenances to any business being conducted, and dimensions thereof, including notations as to present or proposed use of the buildings.
- 2.3.3 Any and all driveways, tapers, right turn lanes, passing lanes, and center lanes for left turns, which are to be constructed, reconstructed, relocated, surfaced, resurfaced, operated, used, or maintained, shall be designed in accordance with Part 6 of these Rules and include the following dimensions and features:
 - (A) Widths of all driveways.
 - (B) Radii of driveway returns and other points of curvature.
 - (C) Driveway grades or profile view of driveway.
 - (D) Angle of the driveway(s) relative to the roadway edge of pavement if not perpendicular.
 - (E) Dimensions of roadside control island, other traffic islands adjacent to the road and traffic control island/islands in the road.
 - (F) Driveway surface material and traffic island surface material.
 - (G) Sight Distance for the approach.
 - (H) Rumble strips.
 - (I) Dimensions of all taper lengths, lane widths and length, length of curb.
 - (J) Cross-section of proposed pavement showing depth and type of material.
- 2.3.4 Distance from existing driveway(s) and proposed driveway(s) to the nearest Intersecting street or cross-road, dimensions to property lines, property lines extended to the road pavement, and buildings and business appurtenances.

- 2.3.5 All roadside features, in addition to driveways, to be constructed within the Right-of-Way including roadside control island, curb, sidewalks, authorized traffic signs, landscaping, and all other roadside features, such as manholes and poles.
- 2.3.6 All existing and proposed underground and overhead public and private utilities, including but not limited to, water main, storm sewer, sanitary sewer, gas main, electric, and fiber optic structures and facilities.
- 2.3.7 Existing and proposed drainage structures, ditches, sewers, and controls shall include:
 - (A) Size and length of culverts, sewer pipe, outlet controls, and/or ditches.
 - (B) Type of culvert, sewer pipe, outlet control, and/or ditch.
 - (C) Grade of culvert, sewer pipe, and/or ditch.
 - (D) Direction of surface water flow on proposed site.
 - (E) Type, size, and location of drainage structures.
 - (F) Retention volume and outlet control calculations.
 - (G) Other hydrologic/hydraulic information as necessary.
- 2.3.8 North directional arrow and scale of drawing.
- 2.3.9 Location map relating the proposed site to Major Roads.
- 2.3.10 All government land corner survey monuments and witnesses located within the project limits.
- 2.3.11 The name, address, and phone number of the individual preparing the plan. When required by law or the R.C.O.C., the seal of the Professional Engineer who prepared the plans along with his/her name, address and phone number must appear on the plan.

RULE 2.4 DESIGN AND PLACEMENT REQUIREMENTS

The design, location, construction, and operation of those activities covered under Rule 1.1 and related construction within the Right-of-Way shall meet requirements of the current M.D.O.T. Standard Specifications for Construction, the Guidelines of the American Association of State Highway and Transportation Officials (A.A.S.H.T.O.), the A.D.A., the design standards set forth in these Rules, and any other standards used by the R.C.O.C.

RULE 2.5 CONDITIONS AND LIMITATIONS OF PERMITS

All permits issued in accordance with these Rules shall be subject to the following conditions and limitations:

- 2.5.1 The Permit Holder shall abide by the conditions and specifications contained in the permit application, the permit and these Rules.
- 2.5.2 Any activity covered under Rule 1.1 shall be allowed only after an approved permit for that activity has been obtained from the Permits Division. The activity allowed shall only be as described in the approved permit therefor and in the Approved Plans accompanying the permit. The Permit Engineer, Director of the Department of Customer Services or the County Highway Engineer must approve all significant changes in plans and drawings.
- 2.5.3 Prior to commencement of any activity covered by the permit, the Permit Holder must give the Permits Division or its representative at least two (2) days (excluding Saturdays, Sundays and Holidays) notice of the date and time of the commencement of the activity.
- 2.5.4 In the event of failure to comply with the terms and conditions of any permit issued in accordance with these Rules or the failure to obtain an appropriate permit, the Permits Division shall have the right, by issuing a

stop order, to halt the construction or other permitted activity until such time as satisfactory compliance shall have been made.

- 2.5.5 The Permits Division shall at all times have the right to inspect and test any driveway, structure, connection, pathway, etc., constructed within the Right-of-Way, and the Permit Holder shall reimburse the Board for all actual costs associated with any on-the-job inspection or testing which may be required by the R.C.O.C. Such inspection and testing may include, without limitation, inspection of materials, soils, construction methods, compaction, grades, drainage, signing, barricading, maintenance, or other safety precautions that may be necessary in emergencies.
- 2.5.6 If, upon inspection, an activity described in Rule 1.1 is found to be in violation, the Permit Holder shall correct any deficiencies within a period of 30 days, as specified in a notice of violation sent by certified mail to the Permit Holder. The Permit Holder, however, shall immediately correct all dangerous or hazardous conditions. If the Permit Holder fails to make the necessary corrections within the required time period, the Board or its agents may perform the necessary correction(s), with the costs incurred to be reimbursed to the Board by the Permit Holder.
- 2.5.7 If the permitted activity is suspended for any reason, including a dispute between the Permit Holder and the Property Owner, the Permit Holder is responsible for restoring the Right-of-Way and the roadway to a condition acceptable to the R.C.O.C. Restoration shall include paving, stabilization of slopes and ditches, and installation of temporary or permanent drainage facilities or structures. The Permit Holder agrees and understands that the R.C.O.C. will take reasonable actions necessary to ensure safe public travel, preservation of the roadway and drainage, the prevention of soil erosion and sedimentation, and elimination of nuisance to abutting Property Owners. All such costs will be charged to the Permit Holder. If any suspension of work will be protracted, or, will not be completed by the Permit Holder, the Permit Holder shall restore the Right-of-Way to a condition similar to the condition that existed prior to issuance of the permit. Should the Permit Holder fail to restore the Right-of-Way, the R.C.O.C. will notify the Permit Holder and request that the Permit Holder's surety under the bond either complete the work or restore the Right-of-Way.
- 2.5.8 All costs incurred by the Board in obtaining or enforcing compliance with conditions and standards of the permit, failure to obtain a permit, or defective workmanship or materials shall be borne by the Applicant, Permit Holder, or Person undertaking the activity without a permit. The R.C.O.C. may order any Permit Holder who conducts activity in a manner detrimental to the R.C.O.C.'s statutory obligation of maintaining roads and streets at all times in a reasonably safe and fit condition for the traveling public to cease and desist all activities within the Right-of-Way, other than ordinary public travel. If necessary, additional cash deposits and expense of maintaining a R.C.O.C. inspector (full-time) may be required from the Permit Holder prior to the resumption of any work.
- 2.5.9 During any and all construction, the Permit Holder shall have a copy of the permit and associated Approved Plans available at the site.
- 2.5.10 The Permit Holder shall take, provide, and maintain all necessary precautions to prevent injury or damage to persons and property from activities covered by the permit and shall use warning signs and safety devices which are in accordance with the M.M.U.T.C.D. The Permit Holder shall maintain all activities covered under Rule 1.1 set forth in the permit in a manner so as not to damage, impair, interfere with, or obstruct a public road or create a foreseeable risk of harm to the traveling public. Any Permit Holder who conducts activities in a manner detrimental to the R.C.O.C.'s statutory obligation of maintaining roads and streets at all times in a safe and fit condition for the traveling public will be required to cease all activities within the Right-of-Way, other than ordinary public travel. If necessary, additional cash deposits and expenses of maintaining a R.C.O.C. inspector (full-time) may be required from the Permit Holder prior to the resumption of permitted activities.
- 2.5.11 The Permit Holder shall comply with all applicable OSHA and MIOSHA requirements.
- 2.5.12 The Permit Holder shall surrender the permit, cease activities, and surrender all rights under the permit, whenever notified to do so by the R.C.O.C. or its representative, because of the need to use the area

covered by the permit, because of noncompliance with any condition or provision of the permit, or for any other reason determined by the R.C.O.C.

- 2.5.13 Drainage from private property shall not be altered to flow into the Right-of-Way or county road drainage system unless approved by the Permits Division. See Rule 5.9 for storm water discharge requirements.
- 2.5.14 The R.C.O.C. makes no warranty either expressed or implied to any Property Owner, the Applicant, the Permit Holder or to any contractor, engineer or surveyor working on their behalf, or to anyone else, as to the suitability of, or condition of, soils and/or ground water that may be encountered during an excavation. Further, the R.C.O.C. makes no warranty as to the suitability of the subsurface for the work or activity proposed.
- 2.5.15 The road surface may not be used for the storage of materials or any other construction purpose without prior approval of the R.C.O.C. Depending on traffic volumes and other conditions, the R.C.O.C. may require the Permit Holder to provide by-pass lanes (either paved or unpaved), may allow one-lane traffic using Traffic Regulators or other traffic control measures, or some combination of the two. Permit Holder shall maintain traffic controls in accordance with Part 3 hereof, "Maintaining Traffic and Traffic Controls," and the M.M.U.T.C.D.
- 2.5.16 The Permit Holder shall remove any and all excavated materials and surplus materials to an area outside of the limits of the Right-of-Way, unless the permit provides the manner of disposal at locations within the Right-of-Way. Excavated material, removed vegetation (including all cuttings, slash and debris) and raw materials or equipment shall not be stockpiled or stored so as to adversely affect the safety of the traveling public. Permit Holder shall be responsible for the proper disposal of, and shall properly dispose of, in compliance with all applicable laws, regulations, ordinances and codes, any and all excavated and/or surplus materials, including without limitation soils or ground water contaminated by petroleum products or other pollutants, whether or not associated with sites found on a list published under the Michigan Environmental Response Act, being Act 307 of 1982, as amended, or on any other list or reported on appropriate release forms for underground storage tanks. Applicant and Permit Holder shall be responsible for obtaining, and shall obtain, all required federal, state and local permits, including from the county enforcing agency or municipal enforcing agency in accordance with Part 91 of Act 451 of 1994. A permit issued pursuant to these Rules does not authorize any work activity or disposal within wetlands or wetland fringes. The Permit Holder shall not dispose of, or allow the disposal of, any materials into or near any lakes, streams, culverts, drainage ditches, wetlands, flood plains, or any other protected area, without the express permission of the local municipality, the Department of Natural Resources or the U.S. Environmental Protection Agency, as applicable, or such other applicable governmental authorities, even if the Property Owner thereof agrees to, or requests, such disposal.
- 2.5.17 The Permit Holder shall store all materials far enough away from the road surface so that they are not a hazard to the traveling public. The Permit Holder shall maintain sufficient clear areas on the shoulder that a car can park off the road in an emergency. Materials and equipment shall not block the vision of traffic seeking ingress or egress to or from the road. Only those materials being used in the immediate, on-going permitted activities can be stored in the Right-of-Way. All other materials, equipment, and trailers must be stored in an area outside of the Right-of-Way. Stockpiles may require soil erosion and sediment control measures. The Permit Holder shall ensure that all loading and unloading activities are conducted in a manner that is safe and minimizes congestion and delay to the traveling public, and that proper traffic controls are in place prior to temporary Lane Closures to load or unload materials or equipment. The Permit Holder may close through lanes from 9:00 am to 3:00 pm only to load or unload materials.
- 2.5.18 The Permit Holder shall store and manage all polluting materials, including, but not limited to oil, grease, diesel fuel, and gasoline in compliance with current state and federal rules and regulations, and in such a manner as to contain discharges and spills and avoid contamination of the ground or ground water. The Permit Holder is responsible for cleanup and removal of any contaminated soils.
- 2.5.19 Prior to commencing any work activity, the Permit Holder shall obtain all required soil erosion control permits from the Office of the Oakland County Water Resources Commissioner, the local municipality, and/or all

other applicable government agencies. The Permit Holder shall install and maintain all erosion control features shown on the Approved Plans, on the soil erosion and sedimentation control permits, or as may be required during the life of the project. All temporary control measures must be removed prior to final inspection.

- 2.5.20 The Permit Holder shall prevent erosion and sedimentation during any suspension of operations, including disputes between the Applicant and Permit Holder. If the Permit Holder fails to maintain soil erosion or sedimentation control measures, including temporary seeding and mulch, the R.C.O.C. shall have the right to undertake such work at the expense of the Permit Holder.
- 2.5.21 The Permit Holder shall notify the Permits Division in writing of the completion of the permitted activity and request a final inspection. Prior to release of the permit, the Permit Holder shall complete, to the satisfaction of the Permits Division, all work authorized by permit.
- 2.5.22 The Applicant and Permit Holder are responsible for obtaining any other permits and complying with all applicable federal, state, and local laws, rules, regulations, codes and ordinances. These include, but are not limited to, regulation of inland lakes and streams, wetlands, woodlands, flood plains, filling, occupational safety and hours of operation. Issuance of a R.C.O.C. permit does not authorize activities otherwise regulated by federal, state, and local government agencies.
- 2.5.23 The Permit Holder, and not the R.C.O.C., is solely responsible for the correctness and completeness of plans submitted as part of an application for a permit. Any error(s) in the aforementioned plans that become evident after the issuance of a permit and which change the scope of permitted activity is subject to review(s) and may be grounds for revocation of a permit.
- 2.5.24 The R.C.O.C. reserves the right to limit the number of permits issued to a Permit Holder. The number of active permits the Permit Holder has and the available work force will determine the number of permits that can be issued to a Permit Holder; normally this would be two permits. Failure of a Permit Holder to comply with permit provisions on other permits (active or otherwise) shall constitute just cause to delay or refuse issuance of additional permits.
- 2.5.25 The Permit Holder is responsible for maintaining a minimum of one acceptable access to all abutting occupied properties, driveways, and side streets, unless otherwise indicated on the Approved Plans. The Permit Holder is further responsible for obtaining the written permission of owners or occupants of properties that may lose access during excavation or other work activity. The local police, fire, or emergency service agencies shall define acceptable access. The Permit Holder is responsible for providing signing and other improvements necessary to ensure adequate access until the roadway, driveway, or side street is restored. The Permit Holder shall conduct all its permitted activities in such manner as to minimize inconvenience to abutting Property Owners. The R.C.O.C. may restrict the progress of excavation by the Permit Holder based on the rate of roadway and Right-of-Way restoration, including permanent or temporary pavement. The R.C.O.C. may require that excavation be suspended, until satisfactorily backfilling of open trenches or excavations have been completed, and driveways, side streets, and drainage restored.
- 2.5.26 Permit Holder shall conduct all pumping or de-watering activities in compliance with National Pollutant Discharge Elimination System (N.P.D.E.S.) permits. Permit Holder shall use outlet filters and/or sediment basins to prevent any sediment from reaching roadside ditches, storm sewer inlets, or surface waters. Discharge of water into roadside ditches for extended periods of time is unacceptable. Placement of water discharge lines on or across the surface of the traveled portion of any road is not allowed without advanced written permission from the R.C.O.C. The Permit Holder shall be responsible for all restoration of the road drainage system. If the R.C.O.C. deems it necessary for the Permit Holder to either alter de-watering operations or to cease de-watering operations altogether for public safety, the Permit Holder shall comply. The Permit Holder shall locate all de-watering facilities as far from the road surface as possible. If, due to extenuating circumstances, de-watering facilities are located closer to the road than the back slope of the ditch, the Permit Holder shall place a flashing light at each such location.

- 2.5.27 Normal weight restrictions are in effect at all times, except during the period when reduced seasonal load limitations are in effect. No staging of vehicles or equipment is permitted within the roadway. All vehicles used as part of construction activities shall comply with all applicable federal, state and local laws, codes and regulations governing their operation on public roadways, and Permit Holder shall not utilize any off-road equipment on any county roadway without the prior consent of the R.C.O.C. Permit Holder shall have road cleaning equipment accessible at all times while construction activities are occurring. Permit Holder shall either reduce loads carried on the roadway sufficient to eliminate possible damage to the roadway, or enter into an agreement with the R.C.O.C. to make appropriated repairs of the roadway. In either event, Permit Holder is responsible for restoration of any and all damaged roadway caused by heavy and high volume of truck traffic resulting from its activities in the Right-of-Way. The use of tracked or crawler mounted equipment on road pavements is not permitted, unless specifically authorized in advance in writing by the R.C.O.C. Written authorization for such use will usually require complete replacement or resurfacing of the entire pavement so used.
- 2.5.28 The Permit Holder shall maintain all work areas in the Right-of-Way in a safe, dust free condition until all work activity in a given area, including the hauling of materials, is completed. At a frequency determined by the R.C.O.C., the Permit Holder shall provide adequate and permitted dust control measures on any and all unpaved detours, by-passes, and shoulders used by traffic. The R.C.O.C. will not permit the use of oil, and the Permit Holder shall not use chloride for dust control on paved roadways.
- 2.5.29 If the area disturbed by the work activity is one (1) acre or greater, or within 500 feet of a lake or stream and requires a National Pollution Discharge Elimination System (N.P.D.E.S.) permit, the Permit Holder shall notify the Road Commission for Oakland County and provide the name and address of the certified operator.

RULE 2.6 REVIEW OF PERMIT DENIAL OR REQUEST FOR VARIANCE

- 2.6.1 An Applicant wishing a review of a denial of a permit application or a denial of a request for variance from permit specifications, may submit to the Director of the Department of Customer Services a written request for review, stating with specificity the facts in support of the request.
- 2.6.2 Within 30 days of submission of the request, the Director shall either grant the request or forward the request and his recommendation to the County Highway Engineer. The Applicant will be furnished with a copy of the Director's recommendation, and have an opportunity to respond in writing to the recommendation.
- 2.6.3 Within 45 days of submission of the request, the County Highway Engineer shall make a final written determination, either granting or denying the request. The R.C.O.C. shall forward a copy of the determination to the Applicant by first class mail. If the request is denied, the response shall set forth the reasons for denial.
- 2.6.4 Failure of the R.C.O.C. to meet the above time guidelines shall not be construed as an approval of the variance requested or permit denied.

RULE 2.7 INSTALLATIONS WITHOUT PERMIT OR IN NON-COMPLIANCE WITH PERMIT CONDITIONS

- 2.7.1 The Permits Division may issue a written notice of violation for any activity covered under Rule 1.1 which is constructed, installed, or performed in violation of these Rules.
- 2.7.2 The Permits Division may issue a written notice of violation for a driveway constructed in violation of these Rules, unless said driveway was in existence on August 6, 1969, and the use of the land served by said driveway has not changed.
- 2.7.3 The notice of violation shall specify which rules are violated, the correction required, and the time for the correction (not less than 30 days), and the R.C.O.C. shall send the notice by certified mail, return receipt requested, to the Property Owner.

- 2.7.4 If the violation is not corrected in the time required by the notice, the R.C.O.C. may perform, or hire a third party to perform, the necessary corrections, remove changes, and restore the Right-of-Way to its previous condition; and the R.C.O.C. shall invoice the owner for the costs it incurred for such work, including allocated overhead.
- 2.7.5 The procedure of this Rule 2.7 is in addition to, and does not negatively affect, the right of the Permits Division to issue a stop order or of the R.C.O.C. to correct conditions within the Right-of-Way creating hazards to vehicular travel.

RULE 2.8 LIABILITY, INDEMNITY AND INSURANCE

- 2.8.1 Permit Holder is responsible for any and all compliance with the terms and conditions of the permit by its employees, agents, contractors, subcontractors, suppliers, laborers and invitees, and any of their suppliers, laborers, and invitees, and Permit Holder shall be liable for any and all noncompliance with the terms and conditions of the permit by any or all of them and for any and all damages to public or private property and injuries to Person or Persons by any or all of them while engaged in activities within the Right-of-Way subject to the permit. If Applicant and Permit Holder are not the same Person, they shall be jointly and severally liable.
- 2.8.2 Prior to commencing any permitted activity in the Right-of-Way, Permit Holder shall have provided to the Permits Division policy endorsements and certificates of insurance satisfactory to the R.C.O.C. for all permits, excluding Residential Driveway permits, in amounts and coverage's specified by the R.C.O.C. The R.C.O.C. shall be a named certificate holder with the provision that it will be given prior notification of any cancellation or reduction of insurance.

The required insurance policy or policies must be obtained in the name of, and maintained in the name of, the Permit Holder who signed the permit. Variations in the coverage or form of insurance may be reviewed by the R.C.O.C. risk management program coordinator and/or the Legal Department for acceptability. Insurance must be kept in force until the permitted activities are completed, inspected, and approved.

Should insurance coverage be reduced below acceptable coverage or canceled, authorization to continue activity under the permit is suspended, and the R.C.O.C. may take appropriate action to restore or protect the road and appurtenances utilizing any inspection or other fees, security deposits, and Bonds to defray expenses.

- 2.8.3 Permit applications and permits will contain indemnity and hold harmless provisions satisfactory to the R.C.O.C., which require the signer to indemnify and hold the Board and its employees harmless for any and all claims arising out of, or in connection with, any permitted activities and/or installation and continued existence of any permitted facilities.

RULE 2.9 PERMIT FEES

Prior to issuance of a permit, Applicant shall pay, in the form of a certified check, bank check, or cash, all amounts indicated on the approved application form for the permit fee, permit deposit, estimated inspection fee, sign fee, signal fee, and pavement striping fee. These amounts may be combined into one certified or bank check.

Personal or corporate checks may be accepted subject to the approval of the Permits Division. No personal checks or corporate checks in excess of \$500 will be accepted.

Inspection fees are estimated and any actual amount over and above the amount estimated, including any costs associated with Work Authorizations, shall be deducted by the R.C.O.C. from the permit deposit. The R.C.O.C. shall bill the Permit Holder for any charges in excess of the permit deposit. The R.C.O.C. shall return to the Permit Holder any unused portion of the permit deposit. The Bond and permit will not be released until such payments are received by the R.C.O.C.

RULE 2.10 SECURITY FOR ROAD RESTORATION

As a condition for obtaining a permit for any activity covered under Rule 1.1, the Permit Holder shall post security in the form of cash, a certified check, irrevocable letter of credit, or Bond to secure the cost of restoring the disturbed portion of Right-of-Way to an acceptable and safe condition as determined by the R.C.O.C. Such cash deposits, certified checks, letters of credit or Bonds are required for all permits issued which would threaten, or otherwise present a potential for surface damages, to the Right-of-Way, and shall provide ready funds or obligations on which the R.C.O.C. can draw if the Permit Holder does not complete in a reasonable time interval the restoration of the Right-of-Way to an acceptable and safe condition as determined by the R.C.O.C. Permit Holders shall provide Bonds on form 75 provided by the Permits Division, or in a form approved by the Legal Department. The Permits Division shall determine the amount of the security required for a particular permit. . For clarification of the above Bond requirements or other questions call the Permits Division at (248) 858-4835.

RULE 2.11 REFUNDS OF APPLICATION FEES, PERMIT FEES, DEPOSITS, AND UNUSED BALANCES

Application fees are non-refundable, regardless of whether the application is approved or denied. Permit fees, sign fees, paint fees, and signal fees become non-refundable upon issuance of the permit.

If the activity covered by a permit does not commence, deposits and inspection fees will be refunded to the Permit Holder upon receipt by the R.C.O.C. of a written request from the Permit Holder for the R.C.O.C. to revoke the permit and return the deposit and inspection fees.

If, after completion of the activity covered by the permit, notification of such completion to the R.C.O.C. and final inspection by the R.C.O.C., any unused balances remain for restoration deposits or estimated inspection fees, the R.C.O.C. will issue a refund to the Permit Holder. Sign fees and pavement striping fees are non-refundable if the R.C.O.C. has incurred costs in reliance on the permit issuance, even if the permitted activity did not proceed. Final inspection will not occur until the R.C.O.C. has been satisfied that all repairs have been made, vegetation has been established, and that no settlements will occur.

RULE 2.12 INTERPRETATIONS AND APPROVALS

- 2.12.1 The implementation of, and any variances from, these Rules, and the standards and guidelines cited therein shall be determined in the engineering judgment of the R.C.O.C. All questions which may arise as to the quality and acceptability of work; the manner of performance and rate of progress of the work; the interpretation of designs, specifications, these Rules and the permit terms conditions; and the satisfactory and acceptable fulfillment of the permit terms and conditions shall be decided by the R.C.O.C.
- 2.12.2 Approvals, reviews and inspections of any nature by the R.C.O.C., shall not be construed as a warranty or assumption of liability on the part of the R.C.O.C. All such approvals, reviews, and inspections are for the sole and exclusive purposes of the R.C.O.C., which is acting in a governmental function; and such approvals, reviews and inspections of the R.C.O.C. shall not relieve the Applicant, the Permit Holder, any contractor or any other Person from his, her or its obligations, nor be construed as a warranty of the propriety of the performance of the Applicant, the Permit Holder, any contractor, or any other Person.

EXHIBIT 2

BOARD OF COUNTY ROAD COMMISSIONERS, OAKLAND COUNTY, MICHIGAN

PERMIT APPLICATION

MAKE CHECK PAYABLE TO ROAD COMMISSION FOR OAKLAND COUNTY

FOR R.C.O.C. USE ONLY

Application No. 36-871

Date Received 7-18-16

Permit E No.

Date of Issuance

APPLICANT: MOBILITIE, LLC

hereby makes

APPLICATION for a permit to CONSTRUCT, OPERATE, USE and/or MAINTAIN or to TEMPORARILY CLOSE A COUNTY ROAD within the part of the right-of-way of road(s) LONE PINE ROAD under the jurisdiction of the Board;

a detailed description of the desired facility and/or activity is required in the space provided below: (include size, length, type of facility; - if underground, indicate depth below surface; if parallel to road, indicate distance from inside edge of facility to edge of pavement, if crossing under roadbed, describe method). THE FOLLOWING MUST BE ATTACHED TO THE APPLICATION WHEN APPLICABLE 1. Plans, specifications and location of facility. 2. Traffic plan and detour route in cases of street closures.

PLEASE CHECK THE APPROPRIATE BOX(ES) THAT APPLY TO THE TYPE OF WORK YOU WISH TO OBTAIN A PERMIT FOR:

Annual	Community Event	<input checked="" type="checkbox"/> Public Utility (i.e. electric, gas, telephone)	Soil Boring/Monitoring Well
Approach/Private Road Access	Landscaping/Grading	Sanitary/Storm Sewer	Watermain
Cable TV	Pathway/Sidewalk	Sign/Subdivision Entrance Marker	Other

Install a proposed transport utility pole in the public right of way. Please see attached Construction Drawing.

SITE ID: 9MIX0008888

COORDINATES: 42.573258, -83.361742

City or Township West Bloomfield Township

Section No. 14

The above activities will be carried out in accordance with plans, specifications, maps and statements filed with the R.C.O.C. as part of this application, and if said application is approved, the above named applicant agrees to abide by the CONDITIONS contained on the reverse side. Since a permit will have to be secured from the Board prior to the start of any construction or maintenance operations proposed by this application, it is intended that the SUPPLEMENTAL SPECIFICATIONS, on the reverse side, are to be incorporated as part of the plans or specifications required for this proposed work.

FOR R.C.O.C. USE ONLY

Design: Right-of-Way:

Traffic: Maintenance:

Planning: Construction:

Subdivision:

Environmental Concerns: Permits:

FOR R.C.O.C. USE ONLY

Application Fee: \$ 100.00 Permit Fee: \$

Receipt No: 515077 Deposit: \$

Bond: \$ Estimated Inspection Fee: \$

(RCOC Form 78) Sign Fee: \$

Signal Fee: \$

TOTAL FEES DUE

AT TIME OF PERMIT ISSUANCE: \$

Proof of Insurance Required Yes ☐ No ☐Pollution Liability Required Yes ☐ No ☐

This application is approved subject to CONDITIONS and SUPPLEMENTAL SPECIFICATIONS contained on the reverse side of this application.

Approval of this application does not relieve applicant from meeting any applicable requirements or duties of law or other public bodies or agencies including but not limited to the Michigan Department of Natural Resources.

APPROVAL OF THIS APPLICATION EXPIRES IN ONE YEAR IF A PERMIT HAS NOT BEEN ISSUED. RESUBMITTAL OF CURRENT PLANS, PERMIT APPLICATION REVIEW FEES AND PERMIT APPLICATION IS REQUIRED IF APPROVAL OF THIS APPLICATION HAS EXPIRED.

REFER ALL INQUIRIES TO (248) 658-4835
DEPARTMENT OF CUSTOMER SERVICES / PERMITS
2420 PONTIAC LAKE ROAD
WATERFORD, MI 48328

APPLICATION APPROVED:

By: Date:

MOBILITIE, LLC

APPLICANT (PRINT OR TYPE)

SIGNATURE

ERIK NELSON, Network Real Estate Specialist

(PRINT TYPED SIGNATURE & TITLE)

120 S. Riverside Plaza, Suite 1800

(312) 638-5428

APPLICANT'S ADDRESS

TELEPHONE NUMBER

Chicago, IL 60606

CITY

CODE

Fax or Email Address

enelson@mobilitie.com

24-571

mobilitie

Intelligent infrastructure

9MIX000888B

42.579254, -83.361742

West Elmhurst Twp, MI 48325



Call before you dig

GENERAL NOTES

THE USER IS RESPONSIBLE FOR THE PROPER USE OF THIS INFORMATION. THE USER SHALL BE RESPONSIBLE FOR THE PROPER USE OF THIS INFORMATION. THE USER SHALL BE RESPONSIBLE FOR THE PROPER USE OF THIS INFORMATION.

SITE INFORMATION

PROJ NO	9MIX000888B
DATE	05/25/2012
DESIGNED BY	9MIX000888B
CHECKED BY	9MIX000888B
APPROVED BY	9MIX000888B
DATE	05/25/2012
TIME	14:30:00
LOCATION	42.579254, -83.361742

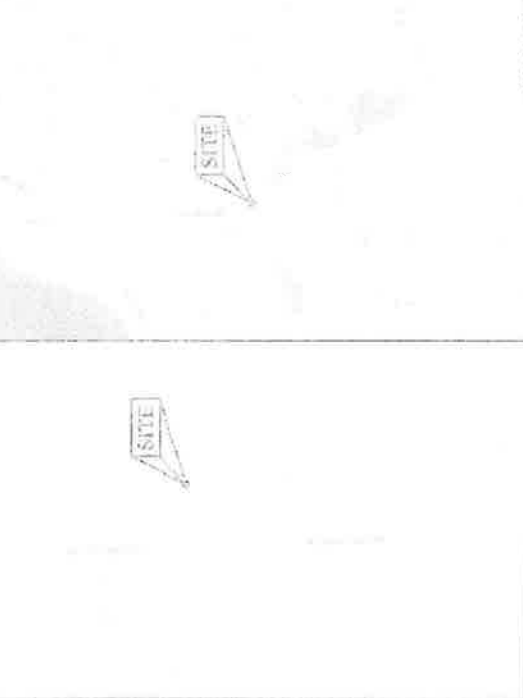
DO NOT SCALE DRAWINGS

CONSTRUCTION SHALL BE IN ACCORDANCE WITH THE 2012 MICHIGAN CONSTRUCTION CODE. THE USER SHALL BE RESPONSIBLE FOR THE PROPER USE OF THIS INFORMATION. THE USER SHALL BE RESPONSIBLE FOR THE PROPER USE OF THIS INFORMATION.

LOCATION MAPS

VICINITY MAP

REGIONAL MAP



PROJECT DESCRIPTION

THE USER IS RESPONSIBLE FOR THE PROPER USE OF THIS INFORMATION. THE USER SHALL BE RESPONSIBLE FOR THE PROPER USE OF THIS INFORMATION. THE USER SHALL BE RESPONSIBLE FOR THE PROPER USE OF THIS INFORMATION.

CODES

THE USER IS RESPONSIBLE FOR THE PROPER USE OF THIS INFORMATION. THE USER SHALL BE RESPONSIBLE FOR THE PROPER USE OF THIS INFORMATION. THE USER SHALL BE RESPONSIBLE FOR THE PROPER USE OF THIS INFORMATION.

SHEET LIST

DATE	10/20/2020
TIME	10:15
LOCATION	100

